

Section 2(ee) Recommendation

Section 2(ee) of FIFRA describes some exceptions to the FIFRA definition of “using a pesticide inconsistent with its labeling”. In other words, this provision presents special circumstances where it is permissible to use a pesticide in a manner for which it is not specifically labeled. These uses include:

- Applying a pesticide at any dosage, concentration, or frequency less than specified on the label, unless prohibited by the label. However, Section 2(ee) cannot be used to increase the dosage, concentration or frequency of an application, nor can it be used to decrease the preharvest interval.
- Applying a pesticide against any target pest not specified on the labeling, to a crop, animal, or site on the label, unless the label only allows use for control of labeled pests.
- Employing any method of application not prohibited by the labeling, unless the label states that the product may be applied only by the methods specified on the label. For example, a Section 2(ee) recommendation cannot add a method of application such as chemigation or aerial application if the label specifies only ground applications.
- Mixing a pesticide or pesticides with a fertilizer, when such a mixture is not prohibited by the labeling.

FIFRA Section 2(ee) recommendations cannot be used for antimicrobial pesticides targeted against human pathogens. (40 CFR 168.22(b)(5)).

The bottom line is that if the crop or site is on the label and the pesticide will control the target pest, and the recommended use is not prohibited by the label, then a recommendation allowed by Section 2(ee) could be useful. Though not required by FIFRA, a pesticide registrant may produce a 2(ee) recommendation bulletin and may request EPA to add the pest to their Section 3 label. However, as states are allowed to be more restrictive than FIFRA, some states may have additional data requirements prior to allowing a 2(ee) use or may not allow 2(ee) uses in their jurisdictions under any circumstances.